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BRAD VAN PATTEN  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10 BRAD VAN PATTEN, and individual,

11 Plaintiff,

12 v.

13 DARE FOODS, INC., et al.,

14 Defendants.  
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Case No. 37-2019-00053698-CU-PO-CTL

[PROPOSED] CONSENT JUDGMENT  
AS TO DARE FOODS, INC.

19 **1. INTRODUCTION**

20 **1.1 The Parties.** This settlement and prospective consent judgment  
21 (“Settlement”) is entered into by and between Brad Van Patten (“Van Patten”) and Dare  
22 Foods, Inc. (“Dare”). Together, Van Patten and Dare are collectively referred to as the  
23 “Parties.” Van Patten is an individual that resides in the State of California, and seeks to  
24 promote awareness of exposures to toxic chemicals and to improve human health by  
25 reducing or eliminating hazardous substances contained in consumer products. Dare is  
26 company which employs ten or more persons and distributes food products in the United  
27 States, including to California.  
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1           **1.2 General Allegations.** Van Patten alleges that Dare is a person in the course  
2 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of  
3 1986, Health & Safety Code Sections 25249.6 *et seq.* (“Proposition 65”) and that  
4 acrylamide is listed pursuant to Proposition 65 as a chemical known to the State of  
5 California to cause cancer. Van Patten alleges that Dare has therefore exposed individuals  
6 to acrylamide from its sales of multigrain crackers without first providing users and  
7 consumers of the product with a clear and reasonable cancer warning as required pursuant  
8 to Proposition 65. Van Patten further alleges that Dare’s alleged failure to meet Proposition  
9 65’s requirements are also a violation of California’s Unfair Competition Act, Business  
10 and Professions Code Sections 17,200 *et seq.* Dare denies Van Patten’s allegations and  
11 claims and, for a variety of reasons, avers that it is not required to provide such Proposition  
12 65 warnings for the multigrain crackers it distributes for sale in California.

13           **1.3 Product Description.** The products covered by this Settlement are all  
14 multigrain crackers, including, without limitation, all varieties and pack sizes of Breton  
15 multigrain crackers, (the “Products”) that have been manufactured, imported, distributed,  
16 offered for sale and/or sold in California by Dare or its affiliates.

17           **1.4 Notice of Violation, Complaint, and Jurisdiction.** On July 3, 2019, Van  
18 Patten served Dare and various public enforcement agencies with a document entitled  
19 “Notice of Violation of California Health & Safety Code § 25249.6 *et seq.*” (the “Notice”).  
20 The Notice provided Dare and such others, including public enforcers, with notice that  
21 alleged that Dare was in violation of California Health & Safety Code § 25249.6 for failing  
22 to warn California consumers and customers that use of the Products will expose them to  
23 acrylamide. No public enforcer has diligently prosecuted the allegations set forth in the  
24 Notice. On October 10, 2019, based on the Notice and the absence of any authorized public  
25 prosecutor of Proposition 65 having filed a suit based on the allegations contained therein,  
26 Van Patten filed a complaint (“Complaint”) in the Superior Court of and for San Diego  
27 County (the “Court”) , Case No. 37-2019-00053698-CU-PO-CTL. For purposes of this  
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1 Settlement, the parties stipulate that this Court has jurisdiction over the allegations of  
2 violations contained in the Complaint and personal jurisdiction over Dare, that venue is  
3 proper in the County of San Diego, and that this Court has jurisdiction to enter this  
4 Settlement as a consent judgment as a full and final resolution of the claims and allegations  
5 contained in the Complaint.

6 **1.5 No Admission.** This Settlement resolves claims that are denied and disputed.  
7 The Parties enter into this Settlement as a full and final settlement of any and all claims  
8 between the Parties for the purpose of avoiding prolonged litigation. Nothing in this  
9 Settlement shall be construed as an admission by Dare of any fact, finding, issue of law, or  
10 violation of law; nor shall compliance with this Settlement constitute or be construed as an  
11 admission by Dare of any fact, finding, conclusion, issue of law or violation of law, such  
12 being specifically denied by Dare. However, this Section 1.5 shall not diminish or  
13 otherwise affect Dare's obligations, responsibilities and duties under this Settlement.

14 **1.6 Effective Date.** For purposes of this Settlement, the term "Effective Date"  
15 shall mean the date this Settlement has been approved by the Court and Van Patten has  
16 provided notice to Dare that it has been entered in the Court's records as a consent  
17 judgment.

18 **2. INJUNCTIVE RELIEF**

19 **2.1** As of the Effective Date, and continuing thereafter, Dare, with respect to the  
20 Products as defined herein which Dare elects to manufacture, import, distribute, sell, or  
21 offer for sale in California, shall take any and all necessary measures to ensure that  
22 acrylamide levels in a Product are, on average, kept below that requiring a cancer warning  
23 under Proposition 65 based on an average consumer's level and frequency of consumption  
24 of crackers and a  $1 \times 10^{-5}$  cancer risk for acrylamide based on scientific evidence equivalent  
25 or better in quality to that which formed the basis for the Proposition 65 listing of  
26 acrylamide as a carcinogen.  
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1           **2.2** Dare may establish compliance with the requirement set forth in Section 2.1  
2 by averaging acrylamide concentration level test results derived from multiple samples of  
3 the Products, or one or more composited samples drawn randomly from the Products, on  
4 an annual basis. An average acrylamide level less than or equivalent to 350 parts per billion  
5 shall be deemed to meet the requirement set forth in Section 2.1, but shall not prejudice  
6 Dare from establishing that an alternative acrylamide concentration level is more  
7 appropriate based on the criteria set forth in Section 2.1 and the Proposition 65 regulations.  
8 Such acrylamide testing shall be performed by Eurofins, Siliker, KPrime or another  
9 accredited laboratory using either:

- 10           1. GC/MS (Gas Chromatograph/Mass Spectrometry),
- 11           2. LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or
- 12           3. any other testing method agreed upon by the Parties.

13 After annual testing is completed, Dare shall provide written confirmation to counsel for  
14 Van Patten that it has complied with the requirements of this Section 2. Dare's monitoring  
15 obligation shall terminate on the second anniversary of the Effective Date.

16 **3. SETTLEMENT PAYMENTS**

17           **3.1 Civil Penalties**

18           In settlement of all the claims referred to in this Settlement, Dare shall pay \$6,000  
19 as a civil penalty, allocated in accordance with California Health & Safety Code §§  
20 25249.12(c)(1) and (d), with 75% of the penalty to be remitted to the California Office of  
21 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the  
22 Penalty remitted to Van Patten no later than ten (10) business days following the Effective  
23 Date. More specifically, Dare shall issue two separate checks for the civil penalty payment  
24 to (a) "Office of Environmental Health Hazard Assessment" in the amount of \$4,500  
25 (75%); and to (b) "Law Offices of George Rikos in Trust for Brad Van Patten" in the  
26 amount of \$1,500 (25%). These Payments shall be delivered as follows:  
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1 (i) The penalty payment owed to Van Patten shall be delivered to the  
2 following address:

3 George Rikos  
4 Law Offices of George Rikos  
5 Attn. Van Pattern v. Dare Settlement  
6 225 Broadway, Suite 2100  
7 San Diego, CA 92101

8 (ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be  
9 delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following  
10 address:

11 Mike Gyurics  
12 Fiscal Operations Branch Chief  
13 Office of Environmental Health Hazard Assessment  
14 Attn. Prop 65 Penalties – Van Patten v. Dare Settlement  
15 1001 I Street  
16 Sacramento, CA 95814

17 Dare shall provide Van Patten’s counsel with a copy of the check it sends to OEHHA with  
18 its penalty payment to Van Patten. Late payments by Dare shall be subject to additional  
19 penalties of \$100/day to be allocated between OEHHA and Van Patten in the same ratio as  
20 set forth above. Van Patten’s counsel shall provide Dare with an IRS W-9 form for its firm  
21 and trust account for Van Patten within three (3) days of the Effective Date and Dare’s  
22 payment deadlines under this Agreement shall be tolled pending its receipt of the W-9  
23 form. In association with the issuance of the payments under this Settlement, Dare will  
24 issue IRS 1099 forms as appropriate given the payees.

### 25 **3.2 Attorneys’ Fees and Litigation Costs**

26 Within ten (10) business days of the Effective Date, Dare shall reimburse  
27 Van Patten’s counsel \$54,000 for fees and costs incurred as a result of investigating and  
28 bringing this matter to Dare’s attention, negotiating a settlement in the public interest, and  
obtaining the Court’s approval of the Settlement and its entry as a consent judgment. Dare  
shall issue a check for this amount payable to “Law Offices of George Rikos” and deliver  
it to the address identified in Section 3.1 above.

1     **4.     MATTERS COVERED BY THIS CONSENT JUDGMENT**

2             **4.1     Release of Dare and Downstream Customers and Entities.**     This  
3     Settlement is a full, final and binding resolution between Van Patten, acting on his own  
4     behalf and in the public interest, and Dare, of any violation of Proposition 65 that was or  
5     could have been asserted by Van Patten or on behalf of his past and current agents,  
6     representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide  
7     warnings for alleged exposures to acrylamide contained in the Products, and Releasers  
8     hereby release any such claims against Dare and its parents, subsidiaries, affiliated entities,  
9     shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors  
10    and assignees, and each entity to whom Dare directly or indirectly distributes or sells the  
11    Products, including but not limited to, downstream distributors, wholesalers, customers,  
12    retailers, and its respective subsidiaries, affiliates and parents, franchisees, cooperative  
13    members and licensees (collectively, the “Releasees”), from all claims for violations of  
14    Proposition 65 through the Effective Date based on their failure to warn of alleged exposure  
15    to the chemical acrylamide from use of the Products.

16            In further consideration of the promises and agreements herein contained, and for  
17    the payments to be made pursuant to Section 3 above, Van Patten, on behalf of himself, his  
18    past and current agents, representatives, attorneys, successors and/or assignees, hereby  
19    covenants not to sue and waives any right to institute, participate in, directly or indirectly,  
20    any form of legal action and releases all claims that he may have, including without  
21    limitation, all actions and causes of action in law and in equity, all obligations, expenses  
22    (including without limitation all attorneys’ fees, expert fees, and investigation fees, and  
23    costs), damages, losses, liabilities and demands against any of the Releasees of any nature,  
24    character, or kind, whether known or unknown, suspected or unsuspected, limited to and  
25    arising out of the alleged or actual exposure to chemicals contained in Dare’s crackers.

26            **4.2     Dare’s Release of Van Patten.** Dare, on behalf of itself, its past and current  
27    agents, representatives, attorneys, successors and/or assignees, hereby waives any and all  
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1 claims against Van Patten, his attorneys and other representatives, for any and all actions  
2 taken or statements made by Van Patten and/or his attorneys and other representatives,  
3 whether in the course of investigating claims or otherwise seeking to enforce Proposition  
4 65 against it in this matter.

5 **4.3 California Civil Code Section 1542.** It is possible that other claims not  
6 known to the Parties arising out of the facts alleged in the Notice and relating to the  
7 Products will develop or be discovered. Van Patten on behalf of himself only, on one hand,  
8 and Dare, on the other hand, acknowledge that this Agreement is expressly intended to  
9 cover and include all such claims up through the Effective Date, including all rights of  
10 action therefor. The Parties acknowledge that the claims released in Sections 4.1 and 4.2,  
11 above, may include unknown claims, and nevertheless waive California Civil Code Section  
12 1542 as to any such unknown claims. California Civil Code Section 1542 reads as follows:

13 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**  
14 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW**  
15 **OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME**  
16 **OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY**  
17 **HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS**  
18 **OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**  
19 **PARTY.**

20 Van Patten and Dare each acknowledge and understand the significance and consequences  
21 of this specific waiver of California Civil Code Section 1542.

22 **4.4 Deemed Compliance with Proposition 65.** Compliance by Dare with this  
23 Settlement following the Effective Date constitutes compliance with Proposition 65 with  
24 respect to exposure to acrylamide from the Products. Products distributed by Dare prior to  
25 the Effective Date may be sold through as previously manufactured and labeled.  
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1     **5. ENTRY OF CONSENT JUDGMENT**

2             The Parties hereby request that the Court promptly enter this Settlement as a consent  
3 judgment based on the motion for its approval Van Patten will be making pursuant to  
4 Section 10 below. Upon entry of the Settlement as consent judgment, Van Patten and Dare  
5 waive their respective rights to a hearing or trial on the allegations contained in the  
6 Complaint.

7     **6. SEVERABILITY**

8             If, subsequent to the execution of this Settlement, any of the provisions of this  
9 Settlement are deemed by a court to be unenforceable, the validity of the enforceable  
10 provisions remaining shall not be adversely affected but only to the extent the deletion of  
11 the provision deemed unenforceable does not materially affect, or otherwise result in the  
12 effect of the Settlement being contrary to the intent of the Parties in entering into this  
13 Settlement.

14    **7. GOVERNING LAW/ENFORCEMENT**

15             The terms of this Settlement shall be governed by the law of the State of California  
16 and apply within the State of California. The rights to enforce the terms of this Settlement  
17 are exclusively conferred on the Parties hereto. Any Party may, after providing sixty (60)  
18 days written notice and meeting and conferring within a reasonable time thereafter to  
19 attempt to resolve any issues, by motion or application for an order to show cause before  
20 this Court, enforce the terms and conditions contained in this Settlement. In the event that  
21 Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law  
22 generally, due to federal preemption or the First Amendment commercial speech rights of  
23 the U.S. Constitution, or as to the Products or multigrain crackers more specifically, Dare  
24 shall provide written notice to Van Patten of any asserted change in the law, and shall have  
25 no further obligations pursuant to this Settlement Agreement with respect to, and to the  
26 extent that, a Product is so affected.



1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided  
3 pursuant to this Settlement Agreement shall be in writing and personally delivered or sent  
4 by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or  
5 two-day courier on any party by the other party to the following addresses:

6 For Dare:

7  
8 Ingrid Bett  
9 VP Finance and Administration  
10 Dare Foods Limited  
25 Cherry Blossom Road  
Cambridge, ON N3H 4R7

With a copy to:

Robin Stafford, Esq.  
Morrison & Foerster, LLP  
425 Market Street, 32<sup>nd</sup> Floor  
San Francisco, CA 94105

11 For Van Patten:

12 George Rikos, Esq.  
13 Law Offices of George Rikos  
14 225 Broadway, Suite 2100  
San Diego, CA 92101

15 Either party, from time to time, may specify in writing to the other party a change of address  
16 to which all notices and other communications shall be sent.

17 **9. COUNTERPARTS: SIGNATURES**

18 This Settlement may be executed in counterparts and by facsimile or .pdf signature,  
19 each of which shall be deemed an original, and all of which, when taken together, shall  
20 constitute one and the same document.

21 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

22 Van Patten agrees to comply with the reporting requirements referenced in Health  
23 & Safety Code Section 25249.7(f) and to seek, by formal and properly noticed motion  
24 (including with service to the Office of the California Attorney General being fully  
25 effectuated at least 45 days prior to a requested hearing thereon), approval of this  
26 Settlement's terms pursuant to Proposition 65 and its associated entry as a consent  
27 judgment by the Court.  
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1 **11. MODIFICATION**

2 This Settlement may be modified only by a written agreement of the Parties and the  
3 approval of the Court or upon a duly noticed motion of either Party for good cause shown.  
4 A showing of technical infeasibility or commercial unreasonableness in meeting the  
5 requirements of Section 2 with respect to the Products shall be deemed to constitute good  
6 cause for a modification to substitute an alternative no significant risk level on the basis of  
7 27 Cal. Code Regs. § 25703(b) in place of the cancer risk level and presumptive part per  
8 billion average concentration threshold set forth in Sections 2.1 and 2.2, and such a  
9 modification shall not be opposed by Van Patten. Any proposed modification shall be sent  
10 to the Office of the California Attorney General in advance of its submission to the Court  
11 such that the Attorney General has a reasonable opportunity to review and comment  
12 thereon.

13 **12. ENTIRE AGREEMENT**

14 This Settlement contains the sole and entire agreement of the Parties and any and  
15 all prior negotiations and understandings related hereto shall be deemed to have been  
16 merged within it. No representations or terms of agreement other than those contained  
17 herein exist or have been made by any Party with respect to the other Party or the subject  
18 matter hereof. This Settlement shall have no effect if it is not approved by the Court and  
19 entered as a consent judgment.

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1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Settlement and have read,  
3 understood and agree to all of the terms and conditions contained of this Settlement.

<p>4 <b>APPROVED AS TO FORM:</b></p> <p>5</p> <p>6 Date:</p> <p>7</p> <p>8 By: George Rikos Counsel to Brad Van Patten</p>	<p>4 <b>APPROVED AS TO FORM:</b></p> <p>5</p> <p>6 Date: January 7, 2020</p> <p>7</p> <p>8 By:  Robin Stafford Counsel for Dare Foods, Inc.</p>
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10 **AGREED TO:**

10 **AGREED TO:**

11 Date: \_\_\_\_\_

11 Date: Jan 9, 2020

12 By: \_\_\_\_\_

12 By: 

13 Brad Van Patten

13 Dare Foods, Inc.

14  
15  
16  
17 **IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE SETTLEMENT SET**  
18 **FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A CONSENT JUDGMENT BY**  
19 **THIS COURT:**

20 DATED: \_\_\_\_\_

21 \_\_\_\_\_  
22 JUDGE OF THE SUPERIOR COURT



1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Settlement and have read,  
3 understood and agree to all of the terms and conditions contained of this Settlement.

<p>4 <b>APPROVED AS TO FORM:</b></p> <p>5</p> <p>6 Date: January 9, 2020</p> <p>7</p> <p>8 By: <i>George Rikos</i> George Rikos Counsel to Brad Van Patten</p>	<p>4 <b>APPROVED AS TO FORM:</b></p> <p>5</p> <p>6 Date:</p> <p>7</p> <p>8 By: Robin Stafford Counsel for Dare Foods, Inc.</p>
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<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <u>01/07/2020</u>	Date: _____
By: <i>Bradly Van Patten</i> Brad Van Patten	By: _____ Dare Foods, Inc.

17 **IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE SETTLEMENT SET**  
18 **FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A CONSENT JUDGMENT BY**  
19 **THIS COURT:**

19 DATED: \_\_\_\_\_

20 \_\_\_\_\_  
21 JUDGE OF THE SUPERIOR COURT